

**REPORT OF THE
OFFICE OF THE EXECUTIVE SECRETARY
OF THE SUPREME COURT OF VIRGINIA**

**A STUDY OF ALTERNATIVE MEANS TO
ENSURE THAT COURT PRACTICES AND
PROCEDURES PROVIDE ADEQUATE
ADVANCE NOTICE AND MEANINGFUL
PUBLIC ACCESS TO JUVENILE COURT
PROCEEDINGS INVOLVING SERIOUS
JUVENILE OFFENDERS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 5

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**

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MEMORANDUM

November 23, 1998

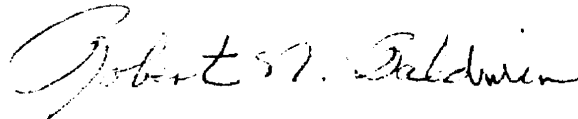
TO: The Honorable James S. Gilmore, III
Governor of Virginia

And

The General Assembly of Virginia

The 1998 General Assembly, through Senate Joint Resolution 190, requested that the Office of the Executive Secretary of the Supreme Court of Virginia study alternative means to ensure that court practices and procedures provide adequate advance notice and meaningful public access to juvenile court proceedings involving serious juvenile offenders. Enclosed for your review and consideration is the report which has been prepared in response to this request.

Respectfully submitted,



Robert N. Baldwin
Executive Secretary

Office of the Executive Secretary

Senate Joint Resolution 190

Study Committee

Honorable J. Martin Bass
Fifteenth District Juvenile & Domestic Relations District Court

Honorable Stephen W. Rideout
Eighteenth District Juvenile & Domestic Relations District Court

Mr. Dave Burton, Deputy Managing Editor, *The Richmond Times-Dispatch*

Mr. Laurence Hammack, Courts Reporter, *The Roanoke Times*

Mr. Frederick C. Jenks III, Clerk
Virginia Beach Juvenile & Domestic Relations District Court

Ms. Edna S. DeChristopher, Clerk
York Juvenile & Domestic Relations District Court

Mr. Kevin Moran, Director, Fourth District Court Service Unit

Theodore F. Adams, III, Esq., Counsel for Virginia Press Association

Ms. Nancy Ross, Executive Director, Commission on Youth

STAFF

Donald R. Lucido, Director, Technical Assistance Department
Steven L. Dalle Mura, Director, Legal Research Department
Janice Conway, Court Technical Assistant, Technical Assistance Department

I. Authority for Study

The 1998 General Assembly approved Senate Joint Resolution 190, which requested that the office of the Executive Secretary, in consultation with the Association of District Court Clerks, study alternative means to ensure that the court practices and procedures in Virginia's juvenile and domestic relations district courts provide the public with notice in advance of hearings for those juveniles age 14 and over charged with delinquent offenses which would be a felony if committed by an adult. With the technical assistance of the Commission on Youth, the Office of the Executive Secretary undertook a review of the law and court practices regarding the confidentiality of juvenile hearings and documents.

II. Study Committee

For the purpose of conducting this study, the Office of the Executive Secretary created a study committee consisting of judges, clerks of court, a court services unit director and representatives of the press. The members of the Study Committee were:

Hon. J. Martin Bass, Fifteenth District Juvenile & Domestic Relations District Court

Hon. Stephen W. Rideout, Eighteenth District Juvenile & Domestic Relations District Court

Mr. Dave Burton, Deputy Managing Editor, *The Richmond Times-Dispatch*

Mr. Laurence Hammack, Courts Reporter, *The Roanoke Times*

Mr. Frederick C. Jenks III, Clerk, Virginia Beach Juvenile & Domestic Relations District Court

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Mr. Kevin Moran, Director, Fourth District Court Service Unit

Theodore F. Adams, III, Esq., Counsel for Virginia Press Association

Ms. Nancy Ross, Executive Director, Commission on Youth

III. Executive Summary

Chapters 755 and 914 of the 1996 Acts of Assembly, which together were known as the Juvenile Justice Reform Act ("the Act"), opened certain proceedings held in juvenile and domestic relations district court involving juveniles to public view. In particular, the Act provided that hearings shall be open to the public in those proceedings involving juveniles fourteen years of age or older, who have been charged with what would be a felony if committed by an adult. However, the juvenile and domestic relations district court records involving such juveniles are not open to the public unless, and until, such a juvenile has been adjudicated delinquent for a felony-delinquency. Therefore, the Act did not authorize court personnel to provide information from court records to the public regarding those juveniles prior to adjudication.

The prohibition of the release of information from juvenile records about specific juveniles prior to their adjudication for a felony-delinquency meant that the ability of the public to attend hearings in these matters could amount to "a right without a remedy." While the public could attend such a hearing, they were limited in discovering specific information about these hearings beforehand. Public access was experienced as less meaningful to the extent to which that access depended either upon a continuing monitoring of courthouse activity, fortuitous discovery of when an open hearing was scheduled or learning the time of a hearing through other routes.

The Study Committee reviewed the applicable statutory provisions regarding access to juvenile records and to hearings in juvenile and domestic relations district court proceedings. A goal of this review was to see how both the intent of the Act to "open up" certain proceedings in the juvenile and domestic relations district court and the purposes of this study could be furthered within the current statutory framework. The Study Committee considered the interests of the public and the legitimate needs of the press, along with the administrative responsibilities of the court system, in attempting to identify a solution which would secure meaningful public access to these proceedings while also appropriately protecting that information which the relevant statutes provide shall remain confidential.

The Study Committee concluded that it would be permissible under the current statutory framework to make public in advance the time, the date and the location of these open hearings, as long as identifying information is not made public or otherwise compromised prior to adjudication. As a result of this study, the Office of the Executive Secretary offers the following two recommendations:

Recommendation 1.

Extensive training should be provided to juvenile and domestic relations district court judges and clerks on the current statutory authority regarding the confidentiality of juvenile case records and dockets and the status of juvenile records pending adjudication for a delinquent act which would be a felony if committed by an adult.

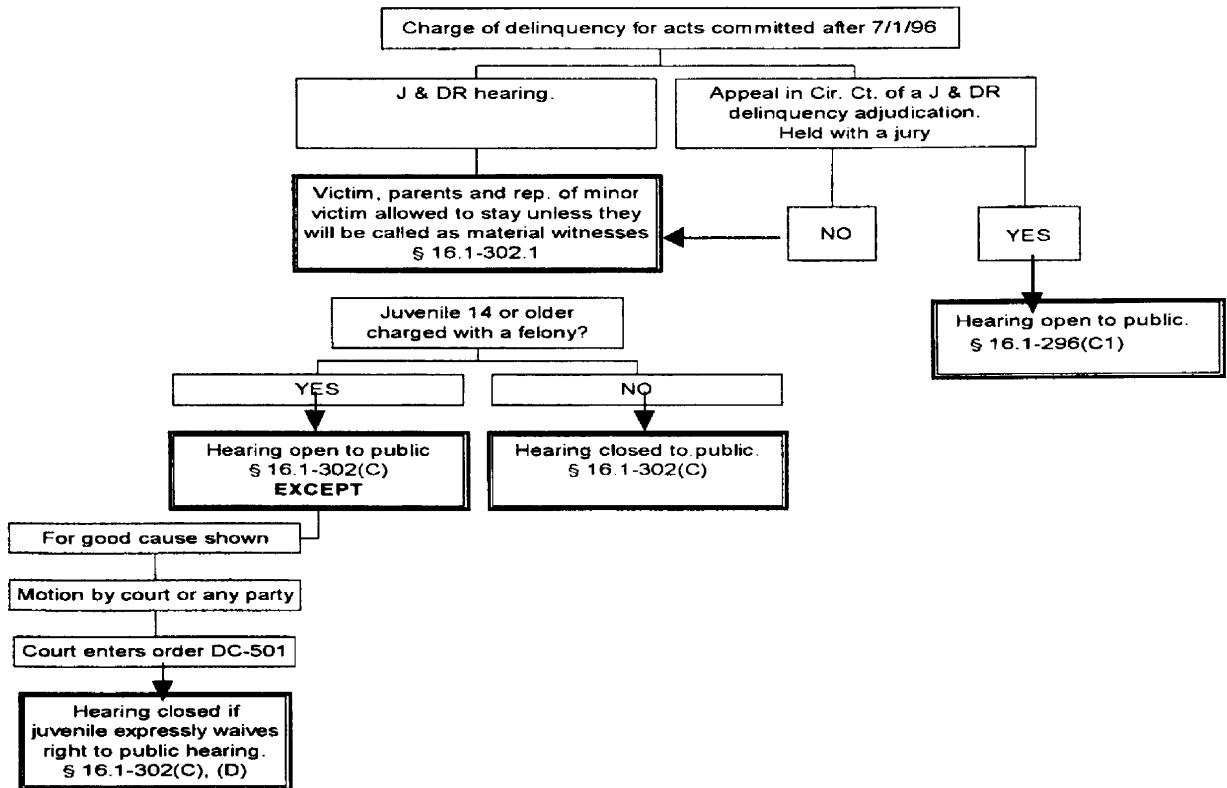
Recommendation 2.

The court system, with the assistance of the Office of the Executive Secretary, should implement a uniform notification procedure, consistent with the current statutory framework, which provides advance notice of open juvenile hearings. This procedure should utilize the automated case management system ("CMS") as now in use in the district courts. The report would list the day and time for those hearings in proceedings where a juvenile fourteen years of age or older has been charged with a felony-delinquency, as well as indicating the offense charged and the courtroom where the hearing will be conducted. It would not list the name or other identifying information regarding the individual juvenile. The report would be posted in the public area of the juvenile court facility for public information purposes.

IV. Confidentiality Of Delinquency Court Records

As previously noted, the 1996 General Assembly opened hearings in proceedings for juveniles age 14 and older charged with what would be a felony if committed by an adult and opened the court records of these juveniles who have been adjudicated delinquent on the basis of such a charge.

The following chart describes public access to hearings.



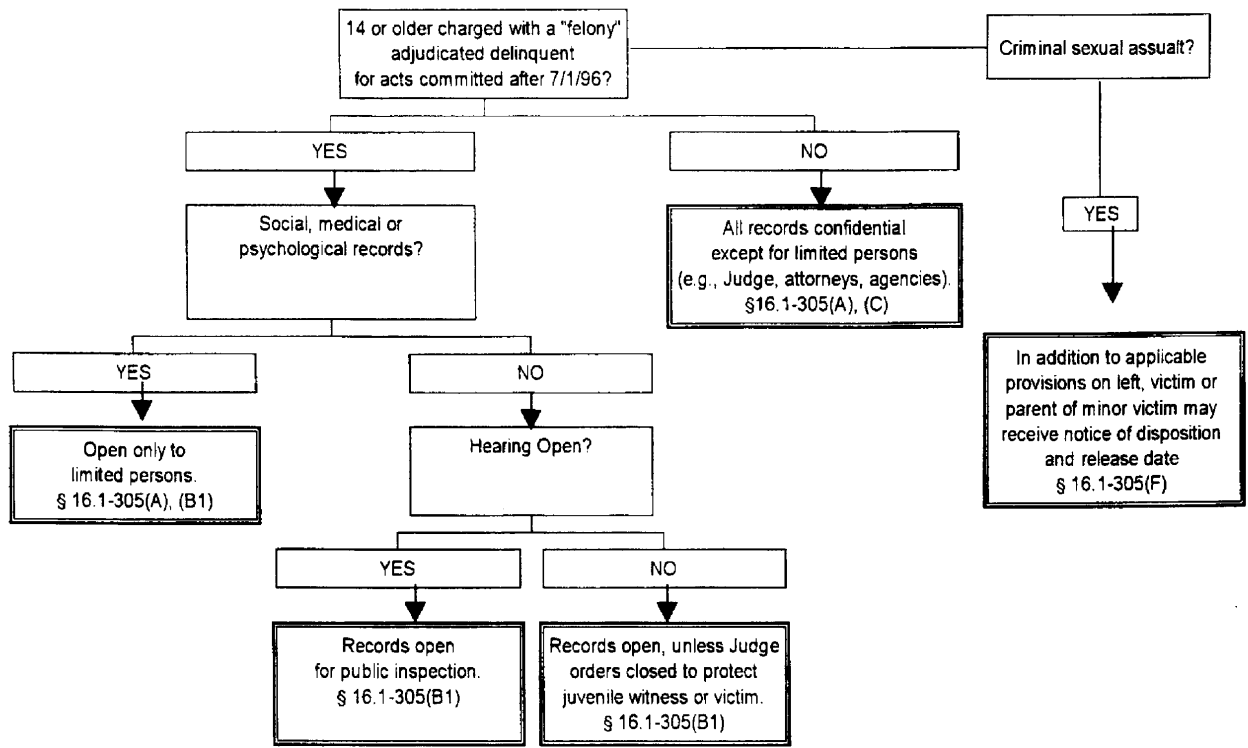
Even though the specified hearings are open to the public, unless closed by court order for good cause upon motion of the court or any party,¹ the clerk of the juvenile and domestic relations district court does not have the authority to confirm a hearing date and time for any public inquiry on any juvenile *by name* during the time the case is pending prior to an adjudication of delinquency (finding of guilt of the felony-delinquent offense)² or to allow the public to inspect the *pending* charging document or related case papers identifying a specific juvenile *by name* absent a court order.³

¹Va. Code 16.1-302 C. "The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper. However, proceedings in cases involving an adult charged with a crime and hearings held on a petition or warrant alleging that a juvenile fourteen years of age or older committed an offense which would be a felony if committed by an adult shall be open. Subject to the provisions of subsection D for good cause shown, the court may, sua sponte or on motion of the accused or the attorney for the Commonwealth close the proceedings. If the proceedings are closed, the court shall state in writing its reasons and the statement shall be made a part of the public record."

²Va. Code 16.1-305 B1. "If a juvenile fourteen years of age or older at the time of the offense *is adjudicated delinquent* on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public." (Emphasis added)

³ Va. Code 16.1-305 A.4 "Any other person, agency or institution, *by order of the court*, having a legitimate interest in the case or in the work of the court" (Emphasis added)

The following flow chart illustrates the clerk's authority to release specific juvenile case information *only after an adjudication of delinquency* (finding of guilt).



During the course of the study, it was learned that there are variations of practice in the juvenile courts regarding confirmation of hearing dates and times by specificity of juvenile name. Practices also vary regarding the posting of dockets, which contain a variety of confidential case specific information.⁴

To ensure greater uniformity of court practices throughout the state regarding posting of the dockets and other practices to confirm hearings, the Committee recommends training for juvenile and domestic relations district court judges and clerks regarding the current statutory confidential requirements governing the confidentiality of juvenile case records and dockets.

⁴ 16.1-305 C. "All other juvenile records, including the docket, petitions, motions, and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B of this section."

V. Automated Report Methodology For Adequate Advance Notice To The Public Of Open Hearings

The Study Committee considered various methods by which clerk's offices may provide the public with advance notice of the hearings which are open without violating the confidentiality provisions discussed in Section IV of this report. In seeking the most efficient and effective procedure, the Study Committee considered the juvenile courts' automated case management system and concluded that a report could be developed which would provide the public information regarding the hearing dates, times, and courtroom designations of those hearings open to the public.

The parameters for programming the report would be the non-confidential hearing information for all felony-delinquencies for juvenile offenders 14 years of age or older. Hearings should be listed in hearing time order. The following non-confidential information should be included in the report as follows:

1. Hearing Date
2. Hearing Time
3. Narrative Description of Offense
4. Offense Date
5. Statutory Reference
6. Courtroom for Hearing

The Study Committee recommends that the report as described above be developed by the Office of the Executive Secretary, of the Supreme Court of Virginia using information available from the juvenile courts' automated case management system. Following development and testing, the Office of the Executive Secretary should ensure that the clerks are provided with all appropriate information regarding the printing, use, and retention of the report.

The Study Committee further recommends that a policy be adopted by the Committee on District Courts which would instruct the clerks of the juvenile and domestic relations district courts to post the report in the courthouse public area for use in determining the hearing date, time, location, and charge by anyone who desires to attend an open hearing.

The Study Committee endorses the following methodology and report prototype for providing meaningful access and advance notice of public hearings for juveniles, 14 years of age or older charged with what would be a felony if committed by an adult. (Appendix III) The report is, in effect, a schedule of all the felony delinquency hearings open to the public which are to be held in a given court for a specific date.

S A M P L E

NAME OF COURT: _____

HEARING DATE : _____

PUBLIC ACCESS JUVENILE HEARING REPORT

This report lists all hearings in this court for the specified date of juveniles who are 14 years of age or older and who have been charged with what would be a felony if committed by an adult.

These hearings are open to the public. However, any specific hearing may be closed by order of the court for good cause shown.

The time listed for each hearing is that which has been scheduled at the time of the printing of this report. The hearing date, time or place may be changed. If this occurs, the office of the clerk of court can provide information regarding any new date, time and/or place of hearing.

The Clerk may not disclose any additional information regarding these hearings.

HEARING TIME	CHARGE	OFFENSE DATE	CODE	COURTROOM
9:00AM	KILLING OF LIVESTOCK	08/12/98	18.2-144	RM02
9:00AM	RECEIVING STOLEN GOODS	08/01/98	18.2-108	RM01
11:00AM	COMPUTER FRAUD >\$200	08/10/98	18.2-152.3	RM01
1:30PM	FELONIOUS ASSAULT	07/31/98	18.2-51	RM01
2:00PM	B&E W/INT COMMIT FELONY	06/16/98	18.2-91	RM03

Date/Time Report Printed

End of Report Message

The Study Committee recognizes this proposed methodology produces a record of the open hearings scheduled before the court on a given date and analyzed whether or not the proposed Public Access Juvenile Hearing Report would itself therefore become a juvenile record which is confidential pursuant to Va. Code §16.1-305C.

The analysis considered the following questions:

1. Is the proposed report (Appendix III) a *docket*, which would be a confidential juvenile case record?⁵
2. Is the report otherwise a court record which would retain any confidential status pursuant to Va. Code §16.1-305C?
3. Are legislative amendments required to clarify the court record status of the report?

The Study Committee concluded that the proposed Public Access Juvenile Report is not a docket since it does not contain names of juveniles and since it is not in the format approved by the Committee on District Courts for dockets pursuant to Va. Code §16.1-69.51.⁶ (Appendix V) Further, it is recognized that, historically, dockets in Virginia courts have specified the name of the defendant in criminal cases, the juvenile in delinquency cases, or the style of the case (plaintiff/petitioner vs. defendant/respondent) in civil cases. None of these elements are included in the proposed report methodology.

The Study Committee also concluded, following both informal discussion with the Attorney General's Office by the Office of the Executive Secretary and written correspondence (Appendix VI), that the report should not be considered a court record which is classified as confidential and entitled to protection pursuant to Va. Code §16.1-305C.

Based on these findings, no legislative amendments are believed to be necessary to permit the court system's production of the Public Access Juvenile Hearing Report.

⁵ Va. Code §16.1-305C. "All other juvenile records, *including the docket*, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B of this section." (Emphasis added)

⁶ The approved Committee on District Court docket form includes the title "Docket" and juvenile name, offense description, offense date, complainant name, hearing date, hearing time, hearing location, type of hearing, counsel representing the juvenile, and whether or not the juvenile is in detention. The docket is also prepared listing all cases before the Court for a specified date and is not limited to certain cases only scheduled for hearing before the Court

APPENDIX

- I. Senate Joint Resolution 190
 - II. Study Committee Membership
 - III. Public Access Juvenile Report
 - IV. Flow Charts Detailing Statutory Authority
regarding Public Hearings and Public Records
in the Juvenile & Domestic Relations District
Courts
 - V. Juvenile & Domestic Relations District Court
Docket (Fictitious Training Docket)
 - VI. Deputy Attorney General Correspondence
-

summary

SENATE JOINT RESOLUTION NO. 190

Requesting the Office of the Executive Secretary of the Virginia Supreme Court, in consultation with the Association of District Court Clerks, to study alternative means of ensuring that court practices and procedures provide adequate advance notice and meaningful public access to juvenile court proceedings involving serious juvenile offenders.

Agreed to by the Senate, February 17, 1998

Agreed to by the House of Delegates, March 12, 1998

WHEREAS, in 1996, the General Assembly of Virginia enacted comprehensive changes in the laws governing juveniles charged with committing crimes; and

WHEREAS, these changes resulted from a growing public frustration with a system that appeared to favor protection of a juvenile offender's privacy interests over legitimate public safety concerns; and

WHEREAS, a significant aspect of this legislation opened for public scrutiny certain juvenile court proceedings and juvenile court records involving older juveniles charged with serious felonies; and

WHEREAS, because of the continued need to retain confidentiality and privacy with regard to other matters handled by the juvenile courts, logistical problems have arisen for the public, the media, and the clerks in determining which proceedings will be open to the public, and when and where those proceedings will take place; and

WHEREAS, there is a need to provide uniformity and standards of practice for judicial personnel to follow to ensure proper public access and consistent implementation of the Commonwealth's public policy regarding juveniles; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Office of the Executive Secretary of the Virginia Supreme Court, in consultation with the Association of District Court Clerks, be requested to study alternative means of ensuring that court practices and procedures provide adequate advance notice and meaningful public access to juvenile court proceedings involving serious juvenile offenders.

Technical assistance shall be provided to the Office of the Executive Secretary by the Commission on Youth. All agencies of the Commonwealth shall provide assistance to the Office of the Executive Secretary for this study, upon request.

The Office of the Executive Secretary of the Virginia Supreme Court shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.



Go to ([General Assembly Home](#))

STUDY OF
SENATE JOINT RESOLUTION 190
OFFICE OF THE EXECUTIVE SECRETARY
OF THE SUPREME COURT OF VIRGINIA

COMMITTEE MEMBERS

Honorable J. Martin Bass

Fifteenth District Juvenile & Domestic Relations District Court

Honorable Stephen W. Rideout

Eighteenth District Juvenile & Domestic Relations District Court

Mr. Dave Burton, Deputy Managing Editor, *The Richmond Times-Dispatch*

Mr. Laurence Hammack, Courts Reporter, *The Roanoke Times*

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Donald R. Lucido, Director, Technical Assistance Department

Steven L. Dalle Mura, Director, Legal Research Department

Janice Conway, Court Technical Assistant, Technical Assistance Department

NAME OF COURT: _____

HEARING DATE : _____

PUBLIC ACCESS JUVENILE HEARING REPORT

This report lists all hearings in this court for the specified date of juveniles who are 14 years of age or older and who have been charged with what would be a felony if committed by an adult.

These hearings are open to the public. However, any specific hearing may be closed by order of the court for good cause shown.

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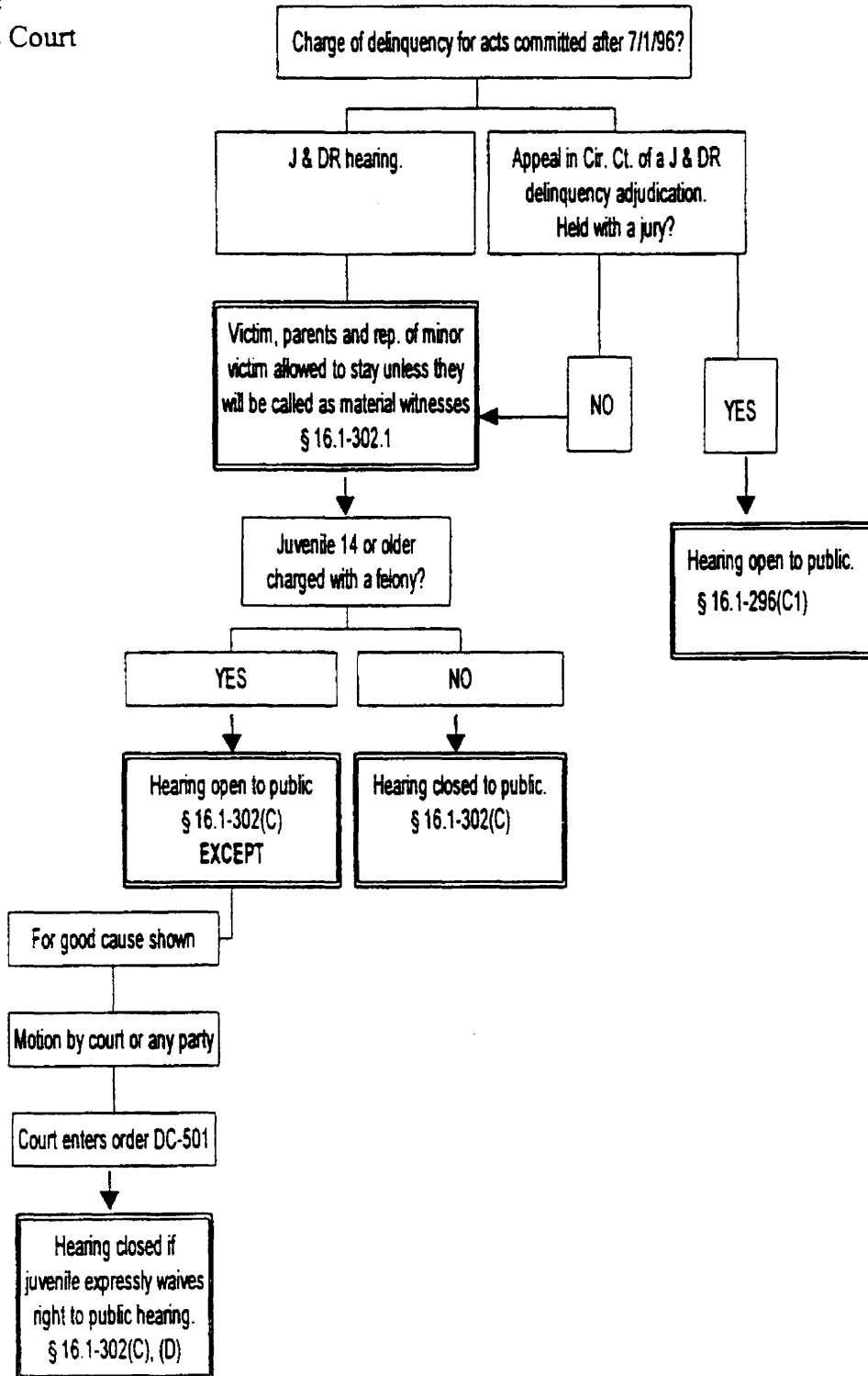
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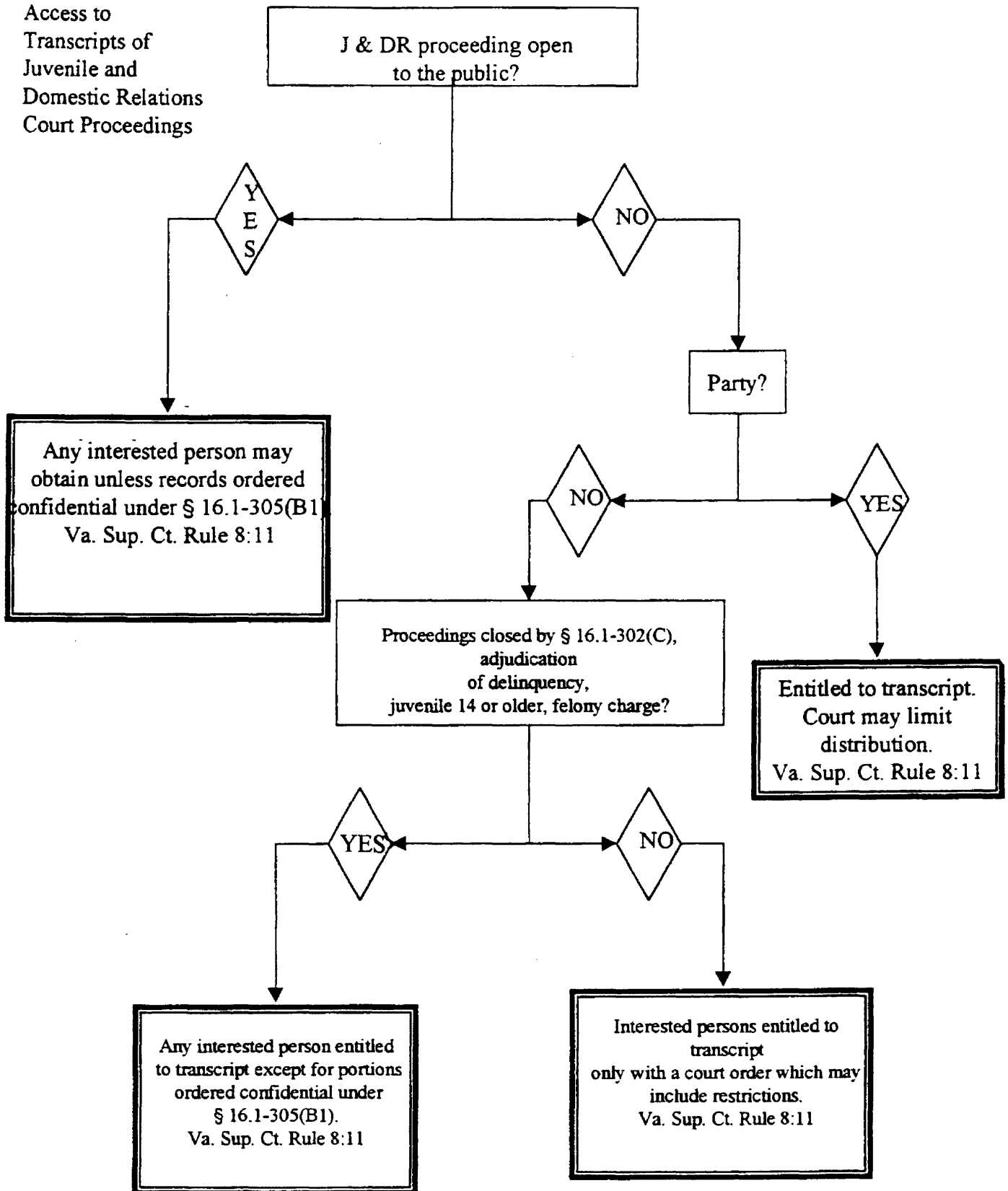
Date/Time Report Printed
End of Report Message

APPENDIX IV

Public Access to Juvenile and Domestic Relations Court Hearings



Access to
Transcripts of
Juvenile and
Domestic Relations
Court Proceedings





COMMONWEALTH of VIRGINIA

Office of the Attorney General

Richmond 23219

October 15, 1998

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Janice P. Conway
Court Technical Assistant
4121 Plank Road, #217
Supreme Court of Virginia
Fredericksburg, Virginia 22407

RE: Senate Joint Resolution 190

Dear Ms. Conway:

I am in receipt of your letter dated September 26, 1998, asking that I comment on two issues which the committee established in response to SJR 190 has addressed. At the outset, I need to note that the following comments are mine and should not be considered an official opinion of the Attorney General.

Your first inquiry involves the report which is proposed as a way to give notice regarding juvenile court proceeding involving juveniles fourteen years of age or older who are charged with offenses which would be felonies if committed by an adult. Specifically you ask whether I would concur with the conclusion of the committee that the proposed report would not be a "docket" as that term is used in Title 16.1 of Code of Virginia. I agree with the committee's conclusion.

Although "docket" is not specifically defined in Title 16.1, as used in the provisions of the Code relevant to your inquiry, it seems to me that generally the following definition applies:

The name of "docket" or "trial docket" is sometimes given to the list or calendar of causes set to be tried at a specified term, prepared by the clerks for the use of the court and bar.

Black's Law Dictionary, rev'd. 6th ed. Of course, as a matter of practice, a docket for a specified term is broken out into individual daily dockets in the form determined by the Committee on District Courts and approved by the Auditor of Public Accounts, pursuant to Virginia Code § 16.1-69.51. As you point out, the proposed report will not contain the name of the juvenile

Janice P. Conway
October 15, 1998
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involved nor will it be in the docket form approved by the Committee on District Courts. Thus, the proposed report will not fit the above-cited definition of "docket" as it will not indicate the causes to be tried. In addition, it will not qualify as a docket under the format standards established by law as a result of the authority delegated to the Committee on District Courts by the General Assembly.

Moreover, I understand that it is not intended that the proposed report will take the place of the separate juvenile docket required by Virginia Code § 16.1-302 A. Rather, the juvenile courts will continue to prepare those dockets and handle them in the same manner as in the past. This is another indication that the proposed report could not be considered a docket. For all of the foregoing reasons, I agree that the proposed report would not be a docket, as that term is used in Title 16.1.

You next ask whether the proposed report would be subject to the confidentiality requirements of Virginia Code § 16.1-305. It is my opinion that the report would not be subject to those statutory provisions.

The particular requirement at issue appears in subsection C, which limits the availability of "[a]ll other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees" to those persons enumerated elsewhere in § 16.1-305. We have determined that the report is not a docket and it clearly does not qualify as any of the other specific documents listed. You indicate that the report will not be case specific and will not list the names of juveniles. You also state that it is contemplated that the report will be destroyed after the relevant court date has passed. Accordingly, the report will not be among "other papers filed with a case." Thus, all that is left to be determined is the question whether the proposed report should be considered under the general "all other juvenile records" which must also remain confidential.

"Juvenile records" or "records" are not defined terms. (The definitions of various kinds of records contained in § 16.1-69.53 are instructive; however, they are not dispositive because those definitions apply only to Article 6 of Chapter 4.1 of Title 16.1 and § 16.1-305 is contained in Article 12 of Chapter 11.) It is apparent that the intent of the legislative enactment contained in § 16.1-305 C is to protect certain kinds of information pertaining to individual juvenile defendants. The documents listed in that subsection would, in each instance, disclose some sort of information about a particular juvenile. This leads me to conclude that, as used in § 16.1-305 C, "all other juvenile records" encompasses only those records maintained by the court which will provide the reader with information about a particular individual and does not include a document which lists only offenses, the dates of the offenses and the times and places at which those matters will be heard.

Janice P. Conway
October 15, 1998
Page 3

You also ask that I provide the committee with any other comments or input which might be of use as they move to finalize their proposals. I would say two things. First, I believe the committee has done a tremendous job in designing a solution to the problem posed by SJR 190 that does not require substantive legislative action. My second comment is that I cannot say with any certainty that this resolution will satisfy those who are concerned that members of the public and the press are unable to obtain scheduling information about hearings on cases which they are permitted by law to attend. The information on the proposed report may not be sufficient in some cases to fully advise someone when and where a particular matter will be heard. To the extent one goal of the juvenile justice reform effort was greater openness of juvenile proceedings, I suspect some may feel that the proposal falls short of achieving that goal.

I hope this information is useful to the committee. Please feel free to contact me if I may be of additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank S. Ferguson", with a long horizontal flourish extending to the right.

Frank S. Ferguson
Deputy Attorney General